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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ISMAEL ANGEL REYES,

Defendant and Appellant.

H034065

(Santa Clara County

Super.Ct.No. FF826453)

Ismael Angel Reyes, the defendant herein, pleaded no contest to the attempted second degree robbery of Jesus Trejo. (Pen. Code, §§ 211, 212.5, subd. (c), 664.) The trial court accepted the plea and entered judgment against defendant. The court sentenced defendant to three years' formal probation, including a condition of serving a one-year term in county jail.

Counsel for defendant has filed an opening brief that states the case and facts but raises no issues. We notified defendant of his right to submit written argument on his own behalf. Defendant did not do so.

**FACTS**

Because defendant pleaded guilty and waived referral to the probation department for its evaluation of his circumstances, the record is bereft of facts. Defendant stipulated that a police report furnished the factual basis for his plea, but we do not have that report before us.

## DISCUSSION

We have reviewed the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, keeping in mind that defendant did not seek a certificate of probable cause (see Pen. Code, § 1237.5) and accordingly confining our review to grounds for appeal that occurred after entry of defendant's guilty plea and do not affect the plea's validity (Cal. Rules of Court, rule 8.304(b)(1), (b)(4)(B)).

Defendant's attempted robbery conviction places him under the aegis of the "Three Strikes" law. (Pen. Code, §§ 667, subds. (b)-(i); 1170.12 & subd. (b)(1); & § 1192.7, subds. (c)(19), (c)(39).) In a handwritten statement on his notice of appeal, defendant stated, in conjunction with a replacement-of-counsel motion that the trial court heard pursuant to *People v. Marsden* (1970) 2 Cal.3d 118, and then denied, that the "court's appointed attorney, lied about the strikes to [petitioner] pri[o]r to sentencing. [(]See *People v. Serrato* [(1965)] 238 Cal.App.2d 112, 119.[)]]" Nevertheless, having reviewed the entire record, including the transcript of defendant's *Marsden* hearing, we agree with appellate counsel for defendant that there is no arguable issue on appeal. Generally "[t]he reporter's transcript of any hearing held under *People v. Marsden*[, *supra*,] 2 Cal.3d 118 must be kept confidential" (Cal. Rules of Court, Rule 8.328(b)(1); see *People v. Avila* (2006) 38 Cal.4th 491, 605-606) and no exception applies here (see Cal. Rules of Court, Rule 8.328(b)(4)-(b)(6)). We are, therefore, not at liberty to discuss the content of defendant's *Marsden* hearing. Indeed, in open court at sentencing defendant tried to discuss his *Marsden* motion and the trial court warned him not to say anything about it lest it create difficulties for him. Having reviewed the hearing on the motion, however, we may say, without disclosing its substance, that we do not find that it presents the potential for an issue that would be arguable on appeal. The trial court's resolution of defendant's *Marsden* motion fell within its discretion to decide whether to substitute counsel or not (*People v. Gutierrez* (2009) 45 Cal.4th 789, 803).

For the foregoing reasons, we will affirm the judgment.

DISPOSITION

The judgment is affirmed.

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Duffy, J.

WE CONCUR.

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Mihara, Acting P. J.

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McAdams, J.